

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

1. *Local Rule 1.1C is hereby amended as follows:*

L.R 1.1 SCOPE OF RULES

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C. Scope of Rules. Except to the extent inconsistent with any special local rule, these ~~These~~ rules shall apply in all proceedings in civil and criminal actions. Rules governing proceedings before magistrate judges and the special local rules of this Court may be found at the end of these rules.

2. *The following special local rules are hereby adopted:*

PROPOSED LOCAL PATENT RULES

1. SCOPE OF RULES

LPR 1.1. Authority.

The Local Patent Rules for the United States District Court for the Western District of Pennsylvania are promulgated as authorized by and subject to the limitations of Federal Rule of Civil Procedure 83.

LPR 1.2. Citation.

These are the Local Rules of Practice for Patent Cases before the United States District Court for the Western District of Pennsylvania. They should be cited as "LPR," followed by the applicable rule number and subsection.

LPR 1.3. Application and Construction.

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The Court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth in these Local Patent Rules based on the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. If any motion filed prior to the Claim Construction Hearing provided for in LPR 4.6 raises claim construction issues, the Court may, for good cause shown, defer the motion until after completion of the disclosures, filings, or ruling following the Claim Construction Hearing. The Local Civil Rules of this Court shall also apply to these actions, except to the extent that they are inconsistent with these Local Patent Rules.

LPR 1.4. Effective Date.

These Local Patent Rules shall take effect on January 1, 2005 and shall apply to any case filed thereafter. The parties to any other pending civil action in which the infringement, validity or enforceability of a utility patent is an issue shall meet and confer promptly after January 1, 2005, for the purpose of determining whether any provisions in these Local Patent Rules should be made applicable to that case. No later than seven (7) calendar days after the parties meet and confer, the parties shall file a stipulation setting forth a proposed order that relates to the application of these Local Patent Rules. Unless and until an order is entered applying these Local Patent Rules to any pending case, the Local Civil Rules previously applicable to pending patent cases shall govern.

2. GENERAL PROVISIONS

LPR 2.1. Governing Procedure.

(a) **Initial Scheduling Conference.** When the parties confer with each other pursuant to Fed.R.Civ.P. 26(f), in addition to the matters covered by Fed.R.Civ.P. 26, the parties must discuss and address in the statement filed pursuant to Fed.R.Civ.P. 26(f), the following topics:

(1) Proposed modification of the deadlines provided for in these Local Patent Rules and/or set forth in the Court's Scheduling Order (see Model Scheduling Order at Appendix "D" for types of deadlines that might be included) and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

(2) Whether the Court will hear live testimony at the Claim Construction Hearing;

(3) The need for and any specific procedures or limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses; and

- (4) The order of presentation at the Claim Construction Hearing.
- (5) Whether parties are willing to go to trial in front of a Magistrate Judge.

(b) **Further Scheduling Conferences.** To the extent that some or all of the matters provided for in LPR 2.1(a)(1)-(4) are not resolved or decided at the Initial Scheduling Conference, the parties shall propose dates for further Scheduling Conferences at which such matters shall be decided.

LPR 2.2. Confidentiality.

All documents or information produced under these Local Patent Rules shall be governed by the terms and conditions of the Protective Order in Appendix “B”. Such Protective Order shall be deemed automatically entered upon the filing or transfer of any civil action to which these Local Patent Rules apply pursuant to LPR 1.3, unless otherwise modified by agreement of the parties or Order of Court.

LPR 2.3. Certification of Initial Disclosures.

All statements, disclosures, or charts filed or served in accordance with these Local Patent Rules must be dated and signed by counsel of record (or by the party if unrepresented by counsel). Pursuant to Rules 11 and 26(g) of the Federal Rules of Civil Procedure, counsel’s signature (or the signature of the unrepresented party) shall constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

LPR 2.4. Admissibility of Disclosures.

Except as hereinafter provided, statements, disclosures, or charts governed by these Local Patent Rules are admissible to the extent permitted by the Federal Rules of Evidence or Procedure. However, the statements or disclosures provided for in LPR 4.1 and 4.2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Local Patent Rules must be taken.

LPR 2.5. Relationship to Federal Rules of Civil Procedure.

Except as provided in this paragraph or as otherwise ordered, it shall not be a legitimate ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed.R.Civ.P. 26(a)(1) that the discovery request or disclosure requirement is premature in light of or otherwise conflicts with, these Local Patent Rules. A party may object, however, to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed.R.Civ.P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in the Local Patent Rules:

- (a) Requests seeking to elicit a party's claim construction position;
- (b) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, device, process, method, act, or other instrumentality; and
- (c) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art.

Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed.R.Civ.P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to provide the requested information to an opposing party under these Local Patent Rules, unless there exists another legitimate ground for objection.

The parties are reminded that the obligations under Fed.R.Civ.P. 26(e) to supplement disclosure and discovery responses shall apply to all Patent Initial Disclosures and all other discovery responses associated with these Local Patent Rules.

3. PATENT INITIAL DISCLOSURES

LPR 3.1. Initial Disclosures.

Not later than ten (10) calendar days before the Initial Scheduling Conference, the parties shall exchange the initial disclosures required by Fed.R.Civ.P. 26(a)(1) ("Initial Disclosures").

- (a) With the Initial Disclosures of the party asserting a claim of patent infringement, such party shall produce or make available for inspection and copying, among other items:

- (1) All Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreement, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell or other manner of transfer, the claimed invention prior to

the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(2) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or a priority date otherwise identified for the patent in suit, whichever is earlier; and

(3) All documents evidencing communications to and from the U.S. Patent Office for each patent in suit and for each patent on which a claim for priority is based.

The producing party shall separately identify by production number which documents correspond to each category.

(b) With the Initial Disclosures of the party opposing a claim of patent infringement, such party shall produce or make available for inspection and copying, among other items:

(1) Source code, specifications, schematics, flow charts, artwork, formulas, drawings or other documentation, including sales literature, sufficient to show the operation of any aspects or elements of each accused apparatus, product, device, process, method or other instrumentality identified in the claims pled of the party asserting patent infringement; and

(2) A copy of each item of prior art, of which the opposing party is aware, that allegedly anticipates each asserted patent and its related claims or renders them obvious.

LPR 3.2. Disclosure of Asserted Claims and Infringement Contentions.

Not later than thirty (30) calendar days after the Initial Scheduling Conference, a party claiming patent infringement must serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Infringement Contentions" shall contain the following information:

(a) Each claim of each patent in suit that is allegedly infringed by each opposing party;

(b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party claiming infringement is aware. This identification shall be as specific as possible. Each product, device, and apparatus must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(d) Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality, and if present under the doctrine of equivalents, the asserting party shall also explain each function, way, and result that it contends are equivalent, and why it contends that any differences are not substantial;

(e) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and

(f) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

LPR 3.3. Document Production Accompanying Disclosure.

With the “Disclosure of Asserted Claims and Infringement Contentions,” the party claiming patent infringement shall supplement its Initial Disclosures, if applicable, based upon the Initial Disclosures of the opposing party.

LPR 3.4. Non-Infringement and Invalidity Contentions.

Not later than fifteen (15) calendar days after service upon it of the “Disclosure of Asserted Claims and Infringement Contentions,” each party opposing a claim of patent infringement, shall serve upon all parties its “Non-Infringement and Invalidity Contentions.” Non-Infringement Contentions shall contain a chart, responsive to the chart required by LPR 3.2(c), that states as to each identified element in each asserted claim, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality, and, if not, the reason for such denial and the relevant distinctions. Invalidity Contentions must contain the following information:

(a) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing

the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 120(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(b) Whether each item of prior art allegedly anticipates each asserted claim or renders it obvious. If a combination of items of prior art allegedly makes a claim obvious, each such combination, and the motivation to combine such items, must be identified;

(c) A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(d) Any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(2) or enablement or written description under 35 U.S.C. § 112(1) of any of the asserted claims.

LPR 3.5. Document Production Accompanying Invalidity Contentions.

With the “Non-Infringement and Invalidity Contentions,” the party opposing a claim of patent infringement shall supplement its Initial Disclosures and, in particular, must produce or make available for inspection and copying:

(a) Any additional documentation showing the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LPR 3.2(c) chart; and

(b) A copy of any additional items of prior art identified pursuant to LPR 3.4(a) which does not appear in the file history of the patent(s) at issue.

LPR 3.6. Disclosure Requirement in Patent Cases Initiated by Declaratory Judgment.

(a) **Invalidity Contentions If No Claim of Infringement.** In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, LPR 3.2 and 3.3 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than thirty (30) calendar days after the Initial Scheduling Conference, the party seeking a declaratory judgment must serve upon each opposing party its Invalidity Contentions that conform to LPR 3.4 and produce or make available for inspection and copying the documentation described in LPR 3.5.

(b) **Application of Rules When No Specified Triggering Event.** If the filings or actions in a case do not trigger the application of these Local Patent Rules

under the terms set forth herein, the parties shall, as soon as such circumstances become known, meet and confer for the purpose of agreeing on the application of these Local Patent Rules to the case.

(c) **Inapplicability of Rule.** This LPR 3.6 shall not apply to cases in which a request for a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable is filed in response to a complaint for infringement of the same patent.

LPR 3.7. Amendment to Contentions.

Amendments or modifications of the Infringement Contentions or the Non-Infringement and Invalidity Contentions are permissible, subject to other applicable rules of procedure and disclosure requirements, if made in a timely fashion and asserted in good faith and without purpose of delay. The Court's ruling on claim construction may support a timely amendment or modification of the Infringement Contentions or the Non-Infringement and Invalidity Contentions.

4. CLAIM CONSTRUCTION PROCEEDINGS

LPR 4.1. Exchange of Proposed Claim Terms and Phrases for Construction.

Not later than ten (10) calendar days after: (i) service of the Non-Infringement and Invalidity Contentions pursuant to LPR 3.4; or (ii) an agreement of the parties to expedite claim construction following the Initial Scheduling Conference pursuant to LPR 2.1(a), each party shall simultaneously exchange a list of claim terms and phrases which that party contends should be construed by the Court, and identify any claim element which that party contends should be governed by 35 U.S.C. § 112(6).

LPR 4.2. Preparation and Filing of Joint Disputed Claim Terms Chart.

Not later than ten (10) calendar days after the exchange set forth in LPR 4.1, the parties shall meet and confer to identify claim terms and phrases that are in dispute, and claim terms and phrases that are not in dispute, and shall prepare and file a Joint Disputed Claim Terms Chart listing claim terms and phrases and corresponding intrinsic evidence for each disputed claim term and phrase, asserted by each party. The Joint Disputed Claim Terms Chart shall be in the format shown in Appendix "C". Each party shall also file with the Joint Disputed Claim Terms Chart an appendix containing a copy of each exhibit of intrinsic evidence cited by the party in the Joint Disputed Claim Terms Chart.

LPR 4.3. Claim Construction Briefing and Extrinsic Evidence.

(a) Not later than thirty (30) calendar days after filing of the Joint Disputed Claim Terms Chart pursuant to LPR 4.2, the Plaintiff, unless otherwise stipulated by the parties, shall serve and file an Opening Claim Construction Brief including a proposed construction of each claim term and phrase which the parties collectively have identified as being in dispute. Such Opening Claim Construction Brief shall also, for each element which the party contends is governed by 35 U.S.C. § 112(6), describe the claimed function of that element and identify the structure(s), act(s), or material(s) corresponding to that element. Such Opening Claim Construction Brief shall further include a statement of the anticipated length of time necessary for the party to present its case at the claim construction hearing. For purposes of this rule, if there is no claim of patent infringement present in the complaint as originally filed, then the party first alleging infringement of the subject patent shall serve and file the Opening Claim Construction Brief.

(b) At the same time the party serves its Opening Claim Construction Brief, that party shall serve and file an identification of extrinsic evidence, including testimony of lay and expert witnesses the party contends supports its claim construction. The party shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, lay or expert, the party shall also serve and file an affidavit signed by the witness that sets forth the substance of that witness' proposed testimony sufficient for the opposing party to conduct meaningful examination of the witness(es).

(c) Not later than twenty (20) calendar days after service of the Opening Claim Construction Brief, the opposing party shall serve and file a Response to Opening Claim Construction Brief including the party's proposed construction of each claim term and phrase which the parties collectively have identified as being in dispute. Such Response shall also, for each element which the opposing party contends is governed by 35 U.S.C. § 112(6), describe the claimed function of that element and identify the structure(s), act(s), or material(s) corresponding to that element. Such Response shall further include a statement of the anticipated length of time necessary for the party to present its case at the Claim Construction Hearing and a concise statement not to exceed five (5) pages as to whether the party objects to the opening party's offer of extrinsic evidence.

(d) At the same time the opposing party serves its Response, that party shall serve and file an identification of extrinsic evidence, including testimony of lay and expert witnesses the party contends supports its claim construction. The party shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, lay or expert, the party shall also serve and file an affidavit signed by the witness that sets forth the substance of that witness' proposed testimony sufficient for the opposing party to conduct meaningful examination of the witness(es).

(e) Not later than fifteen (15) calendar days after service of the Response, the opening party may serve and file a Reply directly rebutting the opposing party's

Response. Such Reply shall further include a concise statement not to exceed five (5) pages as to whether the party objects to the opposing party's offer of extrinsic evidence.

(f) Prior to the Claim Construction Hearing, the Court may issue an order stating whether it will receive extrinsic evidence and, if so, the particular evidence that it will exclude and that it will receive, and any other matter the Court deems appropriate concerning the conduct of the hearing.

LPR 4.4. Claim Construction Hearing.

Subject to the convenience of the Court's calendar, fifteen (15) calendar days following submission of the Reply specified in LPR 4.3(e), the Court shall conduct a Claim Construction Hearing.

5. EXPERT WITNESSES

LPR 5.1. Disclosure of Experts and Expert Reports.

(a) For issues other than claim construction to which expert testimony shall be directed, expert witness disclosures and depositions shall be governed by this Rule.

(b) No later than thirty (30) calendar days after the court's ruling on claim construction each party shall make its initial expert witness disclosures required by Rule 26 on the issues on which each bears the burden of proof.

(c) No later than thirty (30) calendar days after the first round of disclosures, each party shall make its initial expert witness disclosures required by Rule 26 on the issues on which the opposing party bears the burden of proof.

(d) Unless otherwise ordered by the Court, no later than ten (10) calendar days after the second round of disclosures, each party shall make any rebuttal expert witness disclosures permitted by Rule 26.

LPR 5.2. Depositions of Experts.

Depositions of expert witnesses disclosed under this Rule, if any, shall commence within seven (7) calendar days after rebuttal reports are served and shall be completed within thirty (30) calendar days after commencement of the deposition period.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Plaintiff, v. Defendant.

)) Civil Action No.
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PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the following Protective Order has been entered by Court.

Proceedings and Information Governed.

1. This Order and any amendments or modifications hereto ("Protective Order") shall govern any document, information or other thing furnished by any party, to any other party, and includes non-parties who receive a subpoena in connection with this action. The information protected includes, but is not limited to, answers to interrogatories, answers to requests for admission, responses to requests for production of documents, deposition transcripts and videotapes, deposition exhibits, and other writings or things produced, given or filed in this action that are designated by a party as "Confidential Information" or "Confidential Attorney Eyes Only Information" in accordance with the terms of this Order, as well as to any copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information.

Designation and Maintenance of Information.

2. For purposes of this Protective Order, (a) the "Confidential Information" designation shall mean that the document is comprised of trade secrets or commercial information which is not publicly known and is of technical or commercial advantage to its possessor, in accordance with Fed.R.Civ.P. 26(c)(7), or other information required by law or agreement to be kept confidential and (b) the "Confidential Attorney Eyes Only" designation shall mean that the document is comprised of information that the producing party deems especially sensitive, which may include, but is not limited to, confidential research and development, financial, technical, marketing, any other sensitive trade secret information, or information capable of being utilized for the preparation or prosecution of a patent application dealing with such subject matter. Confidential Information and Confidential Attorney Eyes Only Information does not include, and this Protective Order shall not apply to, information that is already in the knowledge or possession of the party to whom disclosure is made unless that party is already bound by agreement not to disclose such information, or information that has been disclosed to the public or third persons in a manner making such information no longer confidential.

3. Documents and things produced during the course of this litigation within the scope of paragraph 2 (a) above, may be designated by the producing party as containing Confidential Information by placing on each page and each thing a legend substantially as follows:

**CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER**

(a) Documents and things produced during the course of this litigation within the scope of paragraph 2(b) above may be designated by the producing party as containing Confidential Attorney Eyes Only Information by placing on each page and each thing a legend substantially as follows:

**CONFIDENTIAL ATTORNEY EYES ONLY INFORMATION
SUBJECT TO PROTECTIVE ORDER**

(b) A party may designate information disclosed at a deposition as Confidential Information or Confidential Attorney Eyes Only Information by requesting the reporter to so designate the transcript or any portion thereof at the time of the deposition. If no such designation is made at the time of the deposition, any party shall have fourteen (14) calendar days after the date of the deposition to designate, in writing to the other parties and to the court reporter, whether the transcript is to be designated as Confidential Information or Confidential Attorneys Eyes Only Information. If no such designation is made at the deposition or within such fourteen (14) calendar day period (during which period, the transcript shall be treated as Confidential Attorneys Eyes Only Information, unless the disclosing party consents to less confidential treatment of the information), the entire deposition will be considered devoid of Confidential Information or Confidential Attorneys Eyes Only Information. Each party and the court reporter shall attach a copy of any final and timely written designation notice to the transcript and each copy thereof in its possession, custody or control, and the portions designated in such notice shall thereafter be treated in accordance with this Protective Order.

(c) It is the responsibility of counsel for each party to maintain materials containing Confidential Information or Confidential Attorney Eyes Only Information in a secure manner and appropriately identified so as to allow access to such information only to such persons and under such terms as is permitted under this Protective Order.

Inadvertent Failure to Designate.

4. The inadvertent failure to designate or withhold any information as confidential or privileged will not be deemed to waive a later claim as to its confidential or privileged nature, or to stop the producing party from designating such information as confidential at a later date in writing and with particularity. The information shall be treated by the receiving party as confidential from the time the receiving party is notified in writing of the change in the designation.

Challenge to Designations.

5. A receiving party may challenge a producing party's designation at any time. Any receiving party disagreeing with a designation may request in writing that the producing party change the designation. The producing party shall then have ten (10) business days after receipt of a challenge notice to advise the receiving party whether or

not it will change the designation. If the parties are unable to reach agreement after the expiration of this ten (10) business day timeframe, and after the conference required under Local Rule 37.1, the receiving party may at any time thereafter seek a Court Order to alter the confidential status of the designated information. Until any dispute under this paragraph is ruled upon by the Court, the designation shall remain in full force and effect and the information shall continue to be accorded the confidential treatment required by this Protective Order.

Disclosure and Use of Confidential Information.

6. Information designated as Confidential Information or Confidential Attorney Eyes Only Information may only be used for purposes of preparation, trial and appeal of this action. Confidential Information or Confidential Attorney Eyes Only Information may not be used under any circumstances for prosecuting any patent application, for patent licensing or for any other purpose.

7. Subject to paragraph 9 below, Confidential Information may be disclosed by the receiving party only to the following individuals provided that such individuals are informed of the terms of this Protective Order: (a) two (2) employees of the receiving party who are required in good faith to provide assistance in the conduct of this litigation, including any settlement discussions, and who are identified as such in writing to counsel for the designating party in advance of the disclosure; (b) two (2) in-house counsel who are identified by the receiving party; (c) outside counsel for the receiving party; (d) supporting personnel employed by (b) and (c), such as paralegals, legal secretaries, data entry clerks, legal clerks and private photocopying services; (e) experts or consultants; and (f) any persons requested by counsel to furnish services such as document coding, image scanning, mock trial, jury profiling, translation services, court reporting services, demonstrative exhibit preparation, or the creation of any computer database from documents.

8. Subject to paragraph 9 below, Confidential Attorney Eyes Only Information may be disclosed by the receiving party only to the following individuals provided that such individuals are informed of the terms of this Protective Order: (a) two (2) in-house counsel who are identified by the receiving party; (b) outside counsel for the receiving party; (c) supporting personnel employed by (a) and (b), such as paralegals, legal secretaries, data entry clerks, legal clerks, private photocopying services; (d) experts or consultants; and (e) those individuals designated in paragraph 11(c).

9. Further, prior to disclosing Confidential Information or Confidential Attorney Eyes Only Information to a receiving party's proposed expert, consultant or employees, the receiving party shall provide to the producing party a signed Confidentiality Agreement in the form attached as Exhibit A, the resume or curriculum vitae of the proposed expert or consultant, the expert or consultant's business affiliation, and any current and past consulting relationships in the industry. The producing party shall thereafter have ten (10) business days from receipt of the Confidentiality Agreement to object to any proposed individual. Such objection must be made for good cause and in writing, stating with particularity the reasons for objection. Failure to object

within ten (10) business days shall constitute approval. If the parties are unable to resolve any objection, the receiving party may apply to the Court to resolve the matter. There shall be no disclosure to any proposed individual during the ten (10) business day objection period, unless that period is waived by the producing party, or if any objection is made, until the parties have resolved the objection, or the Court has ruled upon any resultant motion.

10. Counsel shall be responsible for the adherence by third-party vendors to the terms and conditions of this Protective Order. Counsel may fulfill this obligation by obtaining a signed Confidentiality Agreement in the form attached as Exhibit B.

11. Confidential Information or Confidential Attorney Eyes Only Information may be disclosed to a person, not already allowed access to such information under this Protective Order, if:

(a) the information was previously received or authored by the person or was authored or received by a director, officer, employee or agent of the company for which the person is testifying as a Rule 30(b)(6) designee;

(b) the designating party is the person or is a party for whom the person is a director, officer, employee, consultant or agent; or

(c) counsel for the party designating the material agrees that the material may be disclosed to the person. In the event of disclosure under this paragraph, only the reporter, the person, his or her counsel, the judge and persons to whom disclosure may be made, and who are bound by the Protective Order, may be present during the disclosure or discussion of Confidential Information. Disclosure of material pursuant to this paragraph shall not constitute a waiver of the confidential status of the material so disclosed.

Non-Party Information.

12. The existence of this Protective Order shall be disclosed to any person producing documents, tangible things or testimony in this action who may reasonably be expected to desire confidential treatment for such documents, tangible things or testimony. Any such person may designate documents, tangible things or testimony confidential pursuant to this Protective Order.

Filing Documents With the Court.

13. In the event that any party wishes to submit Confidential Information to the Court, such a submission shall be filed only in a sealed envelope bearing the caption of this action and a notice in the following form:

CONFIDENTIAL INFORMATION

[caption]

This envelope, which is being filed under seal,
contains documents that are subject to a Protective
Order governing the use of confidential discovery material.

No Prejudice.

14. Producing or receiving confidential information, or otherwise complying with the terms of this Protective Order, shall not (a) operate as an admission by any party that any particular Confidential Information contains or reflects trade secrets or any other type of confidential or proprietary information; (b) prejudice the rights of a party to object to the production of information or material that the party does not consider to be within the scope of discovery; (c) prejudice the rights of a party to seek a determination by the Court that particular materials be produced; (d) prejudice the rights of a party to apply to the Court for further protective orders; or (e) prevent the parties from agreeing in writing to alter or waive the provisions or protections provided for herein with respect to any particular information or material.

Conclusion of Litigation.

15. Within sixty (60) calendar days after final judgment in this action, including the exhaustion of all appeals, or within sixty (60) calendar days after dismissal pursuant to a settlement agreement, each party or other person subject to the terms of this Protective Order shall be under an obligation to destroy or return to the producing party all materials and documents containing Confidential Information or Confidential Attorney Eyes Only Information, and to certify to the producing party such destruction or return. However, outside counsel for any party shall be entitled to retain all court papers, trial transcripts, exhibits and attorney work provided that any such materials are maintained and protected in accordance with the terms of this Protective Order.

Other Proceedings.

16. By entering this Order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or parties subject to this Protective Order that may be subject to a motion to disclose another party's information designated Confidential pursuant to this Protective Order, shall promptly notify that party of the motion so that it may have an opportunity to appear and be heard on whether that information should be disclosed.

Remedies.

17. It is Ordered by the Court that this Protective Order will be enforced by the sanctions set forth in Rule 37(b) of the Federal Rules of Civil Procedure and such other sanctions as may be available to the Court, including the power to hold parties or other violators of this Protective Order in contempt. All other remedies available to any person(s) injured by a violation of this Protective Order are fully reserved.

18. Any party may petition the Court for good cause shown, in the event such party desires relief from a term or condition of this Order.

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Plaintiff, v. Defendant.

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Civil Action No.

**CONFIDENTIALITY AGREEMENT FOR EXPERT,
CONSULTANT OR EMPLOYEES OF ANY PARTY**

I hereby affirm that:

1. Information, including documents and things, designated as "Confidential Information," or "Confidential Attorney Eyes Only Information," as defined in the Protective Order entered in the above-captioned action (hereinafter "Protective Order"), is being provided to me pursuant to the terms and restrictions of the Protective Order.
2. I have been given a copy of and have read the Protective Order.
3. I am familiar with the terms of the Protective Order and I agree to comply with and to be bound by such terms.
4. I submit to the jurisdiction of this Court for enforcement of the Protective Order.
5. I agree not to use any Confidential Information or Confidential Attorney Eyes Only Information disclosed to me pursuant to the Protective Order except for purposes of the above-captioned litigation and not to disclose any such information to persons other than those specifically authorized by said Protective Order, without the express written consent of the party who designated such information as confidential or by order of this Court. I also agree to notify any stenographic, clerical or technical personnel who are required to assist me of the terms of this Protective Order and of its binding effect on them and me.
6. I understand that I am to retain all documents or materials designated as or containing Confidential Information or Confidential Attorney Eyes Only Information in a secure manner, and that all such documents and materials are to remain in my personal custody until the completion of my assigned duties in this matter, whereupon all such documents and materials, including all copies thereof, and any writings prepared by me containing any Confidential Information or Confidential Attorney Eyes Only Information are to be returned to counsel who provided me with such documents and materials.

Dated: _____

B y :

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Plaintiff, v. Defendant.

)) Civil Action No.
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CONFIDENTIALITY AGREEMENT FOR THIRD-PARTY VENDORS

I hereby affirm that:

1. Information, including documents and things, designated as "Confidential Information," or "Confidential Attorney Eyes Only Information," as defined in the Protective Order entered in the above-captioned action (hereinafter "Protective Order"), is being provided to me pursuant to the terms and restrictions of the Protective Order.

2. I have been given a copy of and have read the Protective Order.

3. I am familiar with the terms of the Protective Order and I agree to comply with and to be bound by such terms.

4. I submit to the jurisdiction of this Court for enforcement of the Protective Order.

5. I agree not to use any Confidential Information or Confidential Attorney Eyes Only Information disclosed to me pursuant to the Protective Order except for purposes of the above-captioned litigation and not to disclose any such information to persons other than those specifically authorized by said Protective Order, without the express written consent of the party who designated such information as confidential or by order of this Court.

By: APPENDIX C

JOINT DISPUTED CLAIM TERMS CHART** Plaintiff v. Defendant, Civ. Action No. 00-000-XXX				
Disputed Claim Term	Plaintiff Proposed Construction	Plaintiff Citation To Intrinsic Evidence	Defendant Proposed Construction	Defendant Citation To Intrinsic Evidence
1. "Term 1"				
2. "Term 2"				

(5) The parties shall meet and confer by _____ to identify claim terms and phrases that are in dispute, and claim terms and phrases that are not in dispute and prepare and file a Joint Disputed Claim Terms Chart. Each party shall also file with the Joint Disputed Claim Terms Chart an appendix containing a copy of each item of intrinsic evidence cited by the party in the Joint Disputed Claim Terms Chart; *[Not later than ten (10) calendar days after the exchange of proposed claim terms and phrases; LPR 4.2]*

(6) Plaintiff shall file and serve an Opening Claim Construction Brief and an identification of extrinsic evidence by _____; *[30 calendar days after filing of the joint disputed claim terms chart; LPR 4.3(a) and (b)]*

(7) The Opposing Party shall file and serve a response to the Opening Claims Construction Brief, an identification of extrinsic evidence and any objections to extrinsic evidence by _____; *[20 calendar days after service of the opening claim construction brief; LPR 4.3 (c) and (d)]*

(8) The opening party may serve and file a Reply directly rebutting the opposing party's Response, and any objections to extrinsic evidence by _____; *[15 calendar days after opposing party's response is served; LPR 4.3(e)]*

(9) The Court will conduct a hearing on the issue of Claim Construction on _____, *[15 calendar days after submission of the reply; LPR 4]*

(10) The parties shall complete fact discovery by _____, and all interrogatories, depositions, requests for admissions, and requests for production shall be served within sufficient time to allow responses to be completed prior to the close of discovery;

(11) Each party shall make its initial expert witness disclosures, as required under Rule 26, on the issues on which each bears the burden of proof by _____, *[30 days after court's ruling on claim construction; LPR 5.1(b)]*

(12) Each party shall make its initial expert witness disclosures, as required under Rule 26, on the issues on which the opposing party bears the burden of proof by _____; *[30 days after the first round of expert disclosures; LPR 5.1(c)]*

(13) Rebuttal expert witness disclosures are to be made by _____; *[10 calendar days after second round of expert disclosures; LPR 5.1(d)]*

(14) Expert Depositions, if any, shall begin by _____ *[within 7 calendar days after service of the rebuttal]*

expert reports] and be completed by _____; [30 days after commencement of deposition period; LPR5.2]

(15) Motions for summary judgment with evidentiary material and accompanying brief, if appropriate, shall be filed by _____, and responses to such motions shall be filed within _____ days thereafter. Reply and surreply briefs shall not be filed unless approved/requested by the Court;

(16) Plaintiff's pretrial narrative statement shall comply with Rule 16.1.4.A, and be filed by _____;

(17) Defendant's pretrial narrative statement shall comply with Rule 16.1.4.B, and be filed by _____;

(18) The parties shall not amend or supplement their pretrial narrative statements without leave of Court;

(19) All parties shall file an indication whether or not they are willing to proceed to trial in front of a Magistrate Judge by _____;

(20) The Court shall conduct a pretrial conference on _____ 20_____, at _____ (time) Room _____ U.S. Post Office & Courthouse, Seventh Avenue and Grant Street, Pittsburgh, Pennsylvania, and all trial counsel must attend; and

(21) The trial shall commence on _____, 20_____, at _____ (time), Courtroom No. _____.

United States District Judge

cc: All Counsel of Record.